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9 Attorneys for Movant
10 DLJ Mortgage Capital, Inc.

11
12 **UNITED STATES BANKRUPTCY COURT**
13
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 In Re:) CASE: 08-46780JG
17)
18 MANUEL DIAZ-CARABES aka) CHAPTER 13
19 MAUEL DIAZ-CARABEZ aka)
20 MANUEL DIAZ) REF: ASW-525
21)
22 Debtor.) MOTION FOR RELIEF FROM
23) THE AUTOMATIC STAY
24) AND DECLARATION OF
25) JO-ANN GOLDMAN
26) IN SUPPORT THEREON
27)
28) DATE: 04/03/09
TIME: 10:00am
CTRM: 215
U.S. Bankruptcy Court
1300 Clay Street
Oakland, CA 94604

29
30 The Motion of DLJ Mortgage Capital, Inc. respectfully
31 shows as follows:

32 1. This Court has jurisdiction over this proceeding
33 pursuant to 28 U.S.C. Sections 157 and 1334.

34 2. On or about November 19, 2008, a petition under
35 Chapter 13 of the Bankruptcy Code was filed by the Debtor.

36 3. MARTHA G. BRONITSKY is the Chapter 13 Trustee for
37 this case.
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1 4. Movant is, and at all times herein mentioned was a
2 corporation organized and existing under the laws of the
3 United States.

4 5. Movant is the beneficiary under Deed of Trust by
5 way of an assignment that secures a Promissory Note in the
6 original principal sum of \$720,000.00, with the Note all due
7 and payable on March 1, 2037. The Deed of Trust encumbers
8 real property commonly known as:

9
10 701-707 Pope Drive, Vallejo, CA 94591
11 ("Property")

12 and legally described as set forth in the Deed of Trust,
13 which is attached to the Declaration of JO-ANN GOLDMAN.

14 6. The beneficial interest under the Deed of Trust is
15 currently held by Movant by way of an assignment. See
16 Declaration of JO-ANN GOLDMAN.

17 7. There was a default under the terms of the Note and
18 Deed of Trust and on June 16, 2008, Movant caused to be
19 recorded a Notice of Default and Election to Sell.

20 8. On October 14, 2008, Movant caused to be recorded a
21 Notice of Sale.

22 9. The Property is not Debtor's principal residence.

23 10. At the time of the filing of this case, the pre-
24 petition arrearages under the Note and Deed of Trust were
25 approximately \$61,866.14.

26 11. Since the time of the filing of the instant case,
27 and as of March 4, 2009, the Debtor has failed to tender 4
28

1 of the post-petition payments which have fallen due.

2 Further monthly payments in the amount of \$4931.62 will
3 continue to accrue.

4 12. The total amount due under the Note and Deed of
5 Trust as of March 4, 2009, exclusive of post-petition
6 attorneys fees and costs, was approximately \$797,390.16.

7 13. The Debtor has no reasonable prospect for
8 reorganization and the Property is not necessary for an
9 effective reorganization.

10 14. Movant does not have, and has not been offered,
11 adequate protection for its interest in the Property and the
12 passage of time will result in irreparable injury to
13 Movant's interest in the Property including, but not limited
14 to, loss of interest and opportunity.

15 15. For all the reasons set forth herein, there is
16 cause for relief from stay including, but not limited to,
17 lack of adequate protection and the Debtor's failure to make
18 the required Deed of Trust payments.

19 WHEREFORE, Movant prays for the judgment against
20 Respondents as follows:

21 (1) That the automatic stay be terminated so that
22 Movant may exercise or cause to be exercised any and all
23 rights under its Note and/or Deed of Trust and any and all
24 rights after the foreclosure sale, including, but not
25 limited to, the right to consummate foreclosure proceedings
26 on the property and the right to proceed in unlawful
27 detainer;
28

1 (2) For the waiver of the 10 day stay pursuant to
2 Bankruptcy Rule 4001(a)(3).

3 (3) For reasonable attorneys' fees and costs;

4 (4) For costs incurred or expended in suit herein; and

5 (5) For such other and further relief as the Court
6 deems just and proper.
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8 Dated: March 12, 2009

9 /s/ Alan Steven Wolf
10 ALAN STEVEN WOLF
11 Attorneys for Movant
12 DLJ Mortgage Capital, Inc.
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